

# SENATE BILL REPORT

## SB 5706

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As Reported By Senate Committee On:  
Judiciary, February 28, 2007

**Title:** An act relating to aggravated first degree murder.

**Brief Description:** Including a child fourteen or younger in the aggravated first degree murder provisions.

**Sponsors:** Senators Benton, Roach, Schoesler, Stevens, Swecker, Clements and Holmquist.

**Brief History:**

**Committee Activity:** Judiciary: 2/21/07, 2/28/07 [DPS, DNP].

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### SENATE COMMITTEE ON JUDICIARY

**Majority Report:** That Substitute Senate Bill No. 5706 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; Tom, Vice Chair; McCaslin, Ranking Minority Member; Carrell, Roach and Weinstein.

**Minority Report:** Do not pass.

Signed by Senators Hargrove and Murray.

**Staff:** Lidia Mori (786-7755)

**Background:** Murder in the first degree is a serious violent offense and it is committed when a person, with premeditated intent, causes the death of another person. First degree murder is a class A felony and it carries a sentence of life imprisonment. If a defendant is found guilty of aggravated first degree murder, whether through a guilty plea, a jury verdict, or by the decision of a trial court sitting without a jury, a special sentencing proceeding must be held if a notice of special sentencing proceeding was filed and served by the prosecuting attorney, as required in RCW 10.95.040. The special sentencing proceeding is held to determine whether or not the death penalty should be imposed when there is reason to believe there are not enough mitigating circumstances to merit leniency.

A person is guilty of aggravated first degree murder if he or she commits murder in the first degree and one or more aggravating circumstances are found to exist. The list of aggravating circumstances includes, but is not limited to, whether the victim was known, or reasonably should have been known, to the offender to be a law enforcement officer, corrections officer, or a fire fighter who was performing official duties at the time of death. The list also includes the commission of murder when the offender has escaped from prison or while in custody for a

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felony in a county or county-city jail. It is also an aggravating circumstance if the person committed the murder while a court order was in effect that prohibited him or her from contact with the victim and the person had knowledge of the order. If the person committing the crime of murder and the victim were family or household members and the person had previously harassed or assaulted the victim three or more times within a five year period, it is considered an aggravating circumstance.

**Summary of Bill (Recommended Substitute):** The aggravating circumstance of a victim being eight years old or younger and the person who committed the murder being 21 years of age or older at the time of the murder is added to the statutory list of aggravating circumstances that a court will consider in determining whether a person should be found guilty of aggravated first degree murder.

**EFFECT OF CHANGES MADE BY JUDICIARY COMMITTEE (Recommended Substitute):** The aggravating circumstance of a victim being eight years old or younger and the person who committed the murder being 21 years of age or older at the time of the murder is added to the statutory list of aggravating circumstances that a court will consider in determining whether a person should be found guilty of aggravated first degree murder.

**Appropriation:** None.

**Fiscal Note:** Requested on February 20, 2007.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Original Bill:** PRO: Children should be viewed as a protected class. Other states have children in the list of aggravating factors, states like Arizona, Utah, and Idaho. The age of 14 came from the prosecutors. First degree murder would still have to be proven so we would be drawing from a very small pool of people. Children are at least as worthy as any other category of people currently on the list of aggravating circumstances.

CON: This bill limits court discretion regarding sentencing. If the aggravated circumstance as proposed in this bill is found, the court is limited to the death penalty or life in prison. There is no scientific or data-based reason for picking the age of 14 years. If a court finds that a victim is particularly vulnerable, it can already increase the sentence above the standard range.

**Persons Testifying:** PRO: Senator Benton, prime sponsor; Tom McBride, on behalf of Art Curtis, Clark County Prosecutor.

CON: Zachary Fleet, Washington Association of Criminal Defense Lawyers.